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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Oscar A Carranza-Contreras, et al.,

10 Plaintiffs,

11 v.

12 Ally Financial Incorporated, et al.,

13 Defendants.
14

No. CV-18-00441-TUC-CKJ

ORDER

15 Pending before the Court is Defendant Blancey Siganoﬀ’s Motion to Change
16 Venue/Transfer Case to Phoenix Division. (Doc. 37). Siganoﬀ’s Motion was joined by
17 Defendants Repo Specialists, LLC, Mario I. Cazares Burciaga, Express Auto Group LLC,
18 Javier Cazares Burciaga, and Socorro Arzate (“Repo Defendants”). (Doc. 39). Defendant
19 Ally Financial filed a response in opposition. (Doc. 38). Plaintiffs filed no response.

20 The facts pertaining to the choice of venue in this case are unusual. Plaintiffs filed
21 their complaint in August 2018. (Doc. 1). In the section of Plaintiffs’ Complaint entitled
22 “Jurisdiction,” Plaintiffs state: “Venue lies in the **Phoenix** Division of the District of
23 Arizona as Plaintiffs’ claims arose from acts of the Defendants perpetrated therein.” (Doc.
24 1, pg. 2) (emphasis added). Although the jurisdictional statement claimed that venue lies
25 in the Phoenix Division, Plaintiffs filed their lawsuit in the Tucson Division of the District
26 of Arizona. Despite this seeming contradiction, Defendants Siganoﬀ and Ally Financial,
27 Inc. admitted the propriety of Plaintiffs’ jurisdictional statement pertaining to venue,
28 whereas the Repo Defendants, all represented by the same counsel, denied the statements

1 contained in the “Jurisdiction” section of Plaintiffs’ Complaint.

2 On June 24, 2019, a scheduling conference was held and, for the first time, the issue
3 of improper venue was raised. (Doc. 35). Following that scheduling conference, Siganoff
4 filed a motion for an intra-district transfer of this case from the Tucson Division of the
5 District of Arizona to the Phoenix Division. (Doc. 37).¹ Specifically, Siganoff’s Motion
6 invokes 28 U.S.C. § 1404, which permits a venue transfer “[f]or the convenience of parties
7 and witnesses, [and] in the interest of justice . . . to any other district or division where it
8 might have been brought or to any district or division to which all parties have consented.”

9 A “district court has broad discretion in deciding whether to order a transfer.”
10 *Caldwell v. Palmetto State Sav. Bank of S.C.*, 811 F.2d 916, 919 (5th Cir. 1987); *see, e.g.*,
11 *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 23 (1988) (28 U.S.C. § 1404 “is intended
12 to place discretion in the district courts to adjudicate motions for transfer according to an
13 individualized, case-by-case consideration of convenience and fairness”). Ordinarily,
14 “[t]he moving party has the burden to show that the existing forum is inconvenient.” *Texas*
15 *E. Transmission Corp. v. Marine Office-Appleton & Cox Corp.*, 579 F.2d 561, 567 (10th
16 Cir. 1978). “In ruling on a motion to transfer pursuant to § 1404(a), the Court must evaluate
17 three elements: (1) convenience of the parties; (2) convenience of the witnesses; and (3)
18 interests of justice.” *Safarian v. Maserati N. Am., Inc.*, 559 F. Supp. 2d 1068, 1071 (C.D.
19 Cal. 2008). The Court will address each element individually.

20 *1. Convenience of the Parties*

21 Defendants argue that venue in Phoenix is proper because “[a]ll defendants are
22 located in the Phoenix area (or outlying cities). The only party located in Tucson are the
23 Plaintiffs.” (Doc. 37, pg. 3). Although it would undoubtedly be more convenient for
24 Defendants if the case were transferred to the Phoenix Division, Defendants’ argument that
25 a transfer would be more convenient for Defendants is not persuasive since such a transfer
26 would simply shift the inconvenience onto the Plaintiffs, who reside in Tucson, and for

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28 ¹ Although Plaintiffs did not file a response to Siganoff’s motion, at the scheduling
conference, Plaintiffs’ counsel stated that the jurisdictional statement in the Complaint
describing venue being in the Phoenix Division was an error.

1 whom the Tucson Division is more convenient. “Shifting inconvenience from one party to
2 another does not generally justify the intradistrict transfer of a case.” *Highland v. Anderson*,
3 No. 17-CV-362 (RHK/LIB), 2017 WL 7370061, at *3 (D. Minn. Oct. 2, 2017), report and
4 recommendation adopted, No. CV 17-362 (RHK/LIB), 2017 WL 7370054 (D. Minn. Oct.
5 24, 2017).

6 Similarly, Defendants argue in favor of an intra-district transfer because “all counsel
7 involved are also located in the Phoenix area,” (Doc. 37, pg. 3) and that “[a]ll the parties’
8 law firms have Phoenix locations.” (Doc. 39, pg. 2). That counsel is located in the Phoenix
9 area is immaterial as the “[l]ocation of counsel is entitled to little consideration.” *Cheval*
10 *Farm LLC v. Chalon*, No. CV-10-01327-PHX-ROS, 2011 WL 13047301, at *2 (D. Ariz.
11 Jan. 19, 2011); *see also In re Horseshoe Entm’t*, 337 F.3d 429, 434 (5th Cir. 2003) (“The
12 factor of location of counsel is irrelevant and improper for consideration in determining the
13 question of transfer of venue”) (internal quotation omitted).

14 It is well established that a plaintiff’s choice of forum is given substantial
15 consideration. *See Texas E. Transmission Corp.*, 579 F.2d at 567 (“Plaintiff’s choice is also
16 given considerable weight”); *Safarian*, 559 F. Supp. 2d at 1071 (“A plaintiff’s choice of
17 forum is accorded substantial weight in proceedings under 28 U.S.C. section 1404(a)”).
18 Plaintiffs chose the Tucson Division to bring their claim and the burden is on Defendants
19 to “make a strong showing of inconvenience to upset the plaintiff’s choice of forum.”
20 *Welenco, Inc. v. Corbell*, No. CIV. S-13-0287 KJM, 2014 WL 130526, at *5 (E.D. Cal.
21 Jan. 14, 2014). The only argument advanced by Defendants with respect to the convenience
22 of the parties is that a transfer of venue to the Phoenix Division will be beneficial to the
23 Defendants at the expense of the Plaintiffs. This is not a sufficient justification. Plaintiffs
24 initial choice of forum is given substantial deference and an argument that a transfer will
25 solely benefit the Defendants is not an appropriate basis for a transfer.

26 2. Convenience of Witnesses

27 Rather than fully articulating how a transfer will facilitate the convenience of
28 possible witnesses, the Repo Defendants’ Motion merely states “[m]ost, if not all, of the

1 Defendants reside in Phoenix. Most of the witnesses in this case also reside in Phoenix.”
2 (Doc. 39, pg. 2). Siganoff’s motion fails to mention any possible impact an intra-district
3 transfer will have on witnesses. Courts have routinely held that “[t]he convenience of
4 witnesses is often the most important factor in determining whether a section 1404 transfer
5 is appropriate.” *Stribling v. Picazo*, No. 15-CV-03337-YGR, 2018 WL 620146, at *3 (N.D.
6 Cal. Jan. 30, 2018). *See also, e.g., State St. Capital Corp. v. Dente*, 855 F. Supp. 192, 197
7 (S.D. Tex. 1994) (“The relative convenience to the witnesses is often recognized as the
8 most important factor to be considered in ruling on a motion under § 1404(a)”). While the
9 convenience to witnesses is the most important factor, “the convenience of non-party
10 witnesses is more important than the convenience of the parties.” *Martin v. Glob. Tel*Link*
11 *Corp.*, No. 15-CV-00449-YGR, 2015 WL 2124379, at *4 (N.D. Cal. May 6, 2015).

12 The Court finds this factor to weigh against transfer. Ordinarily, “if the transfer is
13 for the convenience of witnesses, defendant must name the witnesses it wishes to call, the
14 anticipated areas of their testimony and its relevance, and the reasons why the present
15 forum would present a hardship to them.” *Bohara v. Backus Hosp. Med. Benefit Plan*, 390
16 F. Supp. 2d 957, 963 (C.D. Cal. 2005). Defendants have provided no detailed information,
17 or even any information, pertaining to witnesses and why the Tucson Division would
18 present a hardship to them outside of an inference that the distance between Phoenix and
19 Tucson would be burdensome.

20 3. *Interests of Justice*

21 Although the convenience of witnesses is often the most important factor in
22 determining whether a section 1404 transfer is proper, “[f]airness considerations may be
23 decisive in ruling on a transfer motion, even when convenience of witnesses and parties
24 points the other way.” *Pratt v. Rowland*, 769 F. Supp. 1128, 1133 (N.D. Cal. 1991). Here,
25 a few significant considerations may weigh in favor of transfer. As Siganoff’s Motion
26 emphasizes, the contract between the parties was entered into in Phoenix and the alleged
27 violation of 49 U.S.C. § 32701, the Federal Odometer Act, occurred in Phoenix.
28 Furthermore, Siganoff’s cross-claims also allege acts that occurred in the Phoenix area.

1 However, despite those considerations, ultimately, “a court must balance the preference
2 accorded plaintiff’s choice of forum with the burden of litigating in an inconvenient
3 forum.” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).
4 It is incumbent upon the Defendants to “make a strong showing of inconvenience to
5 warrant upsetting the plaintiff’s choice of forum.” *Id.*

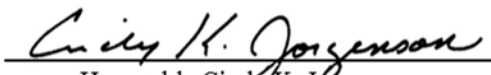
6 The Court notes that this case was filed in August 2018. Defendants neglected to
7 raise an issue regarding proper venue until June 2019 and failed to file a motion requesting
8 a change of venue until July 2019. Although there is no indication that the parties have
9 engaged in any substantive discovery, “[t]he Ninth Circuit has frequently held that a motion
10 for transfer may properly be denied where, as here, a case has been pending for some time
11 in the original court or where a transfer would lead to delay.” *Pratt*, 769 F. Supp. at 1133.
12 Defendants were, or should have been, aware that the case was filed in the Tucson Division
13 and neglected to raise an issue regarding venue for over ten months.

14 Therefore, despite the fact that the Defendants will be inconvenienced by having to
15 litigate the case in the Tucson Division and that the underlying transactions and actions
16 leading to an alleged violation of the Federal Odometer Act occurred in the Phoenix
17 Division, since there is a strong presumption that the Plaintiffs’ choice of forum should be
18 given great deference and that Defendants failed to properly advanced substantial
19 justifications in favor of transfer, Defendants’ request to transfer this case to the Phoenix
20 Division will be denied.

21 Accordingly, IT IS ORDERED:

- 22 1. Defendant Siganoff’s Motion to Transfer Case to Phoenix Division (Doc. 37) is
23 **denied.**

24 Dated this 8th day of August, 2019.

25 
26 Honorable Cindy K. Jorgenson
27 United States District Judge
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